

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 21-1537V

UNPUBLISHED

EILEEN ARCERY,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 25, 2023

Special Processing Unit (SPU);  
Ruling on Entitlement; Concession;  
Table Injury; Influenza (Flu) Vaccine;  
Shoulder Injury Related to Vaccine  
Administration (SIRVA)

*Bruce William Slane, Law Office of Bruce W. Slane, P.C., White Plains, NY, for  
Petitioner.*

*Benjamin Patrick Warder, U.S. Department of Justice, Washington, DC, for  
Respondent.*

### **RULING ON ENTITLEMENT**<sup>1</sup>

On July 1, 2021, Eileen Arcery filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she sustained a shoulder injury related to vaccine administration (“SIRVA”) as a result of her receipt of an influenza (“flu”) vaccine administered on September 26, 2020. Petition at 1. Petitioner further alleges that the vaccine was administered within the United States, that she suffered the residual effects of her injury for more than six months, and that there has been no compensation in the form of an award or settlement for her vaccine-related injury. Petition at 1-4. The case was assigned to the Special Processing Unit of the Office of Special Masters.

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<sup>1</sup> Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On January 19, 2023, Respondent filed an Amended Rule 4(c) report in which he concedes that Petitioner is entitled to compensation in this case.<sup>3</sup> Respondent's Rule 4(c) Report at 1. Specifically, Respondent has reviewed the Petitioner, medical records, and affidavits filed in this case. *Id.* at 6. Respondent has concluded that Petitioner has satisfied the criteria set forth in the Vaccine Injury Table and the Qualifications and Aids to Interpretation for a SIRVA.

**In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.**

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Respondent previously filed a Motion to Dismiss and Rule 4(c) Report on October 24, 2022. ECF No. 24.